MERIDIAN OIL, INC.,
SOUTHLAND ROYALTY CO.

IBLA 94-628, 94-800 Decided August 29, 1997

Appeal from a decision of the Acting Deputy Commissioner, Bureau of Indian Affairs, denying appeal of an order of the Mineral Management Service assessing late payment interest charges for late royalty payments. MMS-88-0063-IND, MMS-88-0291-IND, and MMS-88-0292-IND.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

   The MMS is not barred from assessing late payment interest because it did not request such interest in district court proceedings which determined that late royalty payments were due. The MMS is required by section 111(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1721(a) (1994) and the regulations at 30 C.F.R. §§ 218.54(a) and 218.150(c) to assess interest for late payment of royalties from the date the royalties were due until the date such payment is received in the appropriate MMS accounting office.

2. Federal Oil and Gas Royalty Management Act of 1982: Generally--Oil and Gas Leases: Royalties--Statutory Construction: Generally

   Section 305 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1701 note (1994), provides that section 111 and regulations implemented pursuant thereto apply to oil and gas leases issued prior to the enactment of the Act, unless to do so would be contrary to express and specific provisions of those leases. Where no such provisions exist, the assessment of late payment charges is proper.

3. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Royalties: Generally--Statute of Limitations

   The MMS' demands for interest on late royalty payments on Indian oil and gas leases are administrative actions

that are not covered by the statute of limitations within 28 U.S.C. § 2415(a) (1994). Further, a lessee has a duty to disclose records that it was legally required to compile and voluntarily chose to retain beyond 6 years, so that, notwithstanding the 6-year limit on recordkeeping imposed by 30 U.S.C. § 1713(b) (1994), MMS is not barred from making demands for payment of interest where the lessee has retained relevant documents.

APPEARANCES: Letitia H. White, Esq., Houston, Texas; Lynn H. Slade, Esq., Timothy R. Van Valen, Esq., Albuquerque, New Mexico, for Appellants; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Sarah L. Inderbitzen, Esq., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Meridian Oil, Inc., and Southland Royalty Company (Appellant) 1/ have appealed from an April 25, 1994, Decision of the Acting Deputy Commissioner of Indian Affairs denying appeals of three orders to pay late payment interest on past-due royalty payments. 2/ The orders arise from litigation in Jicarilla Apache Tribe v. Supron Energy Corp., 782 F.2d 855 (10th Cir. 1986), cert. denied, 479 U.S. 970 (1986) (Supron), and Jicarilla Apache Tribe v. Conoco, Inc., Civ. No. 76-430-C (D.N.M. 1988) (Conoco), in which it was determined that the lessees should have used dual accounting methods and that they owed additional royalties to the Tribe. 3/ The Supron litigation involved seven leases in which Appellant had an interest, 4/ and the Conoco litigation involved two other leases in which Appellant had an interest. 5/

1/ In its pleadings, Appellant refers to itself collectively as "Meridian Oil Co. Inc. And Southland Royalty Company." The MMS documents refer to Meridian as Southland's successor-in-interest.

2/ This case was inadvertently docketed as both IBLA 94-628 and as IBLA 94-800. For this reason, IBLA 94-800 is hereby dismissed as inadvertent.

3/ One of the results of the litigations was the determination that the Secretary had the obligation to require the lessees to utilize a dual accounting system. This meant that there was to be a determination of the price of wet gas at the wellhead and a determination of the value of component products into which the gas produced from the leases was processed, i.e., a "net realization" value. Jicarilla Apache Tribe v. Supron Energy, 728 F.2d 1555, 1557 (10th Cir. 1984).

4/ The lease numbers for these seven leases are 609-000100, 609-000101, 609-000103, 609-000105, 609-000145, 609-000150, and 609-000153.

5/ Lease Nos. 609-000124 and 609-000153.

Supron and Conoco Litigation

Because Supron and Conoco are crucial to one of Appellant's arguments, we summarize relevant elements of those cases.

In Supron, the District Court for the District of New Mexico issued a Memorandum Opinion on June 2, 1981, ordering Southland to pay additional royalties (based on dual accounting methods) to the Jicarilla Apache Tribe (Tribe). (App. Ex. 7.) The Tribe subsequently filed a motion and brief for revision of judgment requesting the court to award prejudgment and postjudgment interest either pursuant to the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. § 1721 (1994), or based on common law principles. However, on January 13, 1987, the Tribe withdrew its motion for revision of judgment, stating that it would seek "administrative remedies" for the relief requested in the earlier motion. (App. Exs. 10-12.)

On November 6, 1987, the district court rendered a Partial Final Judgment, (App. Ex. 8), ordering Southland to pay additional royalties for the period from January 1, 1974, through December 31, 1979. The court noted that Southland had failed to include Lease No. 609-000101 in its accounting and ordered it to do so within 60 days of the court's order. Pursuant to the judgment, Meridian paid a late royalty payment of $227,697.58 to the Tribe on December 1, 1987. (Dec. at 2.) In a Final Judgment, entered on June 9, 1988, the court found that the Tribe was owed an additional sum of $24,419.07 in royalties on Lease No. 609-000101. (App. Ex. 9.) The court made no mention of interest payments.

In Conoco, the Tribe initially filed proposed findings of fact and conclusions of law in August 1981. (App. Ex. 14.) In February 1987, the Tribe filed further proposed findings of fact and conclusions of law, asserting its right to "interest on royalties assessed pursuant to the revised accounting report * * * [and] to interest on royalties assessed pursuant to the dual accounting report * * *." (App. Ex. 15.) In an accompanying brief, the Tribe argued that the Supron litigation was "conclusive" as to the dual accounting issues being litigated in Conoco. The Tribe further argued, (App. Ex. 16, at 9), that the "defendants should pay interest on the royalty determined not to have been paid to plaintiff." The Tribe invited the court to award interest under FOGRMA, 30 U.S.C. § 1721(a) (1994), noting that the provision was applicable to oil and gas leases issued "before, on, or after January 12, 1983." In the alternative, the Tribe contended that if the court found that 30 U.S.C. § 1721(a) (1994) was not retroactively applicable, it should award common law prejudgment interest. Id. at 10-11. The Tribe extensively briefed the issue of pre-judgment interest, asking the court to award such interest "in order to do justice to the plaintiff." Id. at 16.

On May 16, 1988, the Conoco court issued Findings of Fact and Conclusions of Law. (App. Ex. 6.) In its Conclusions of Law, the court found

inter alia that dual accounting was properly required of the oil and gas lessees. However, the court instructed the Secretary to "revise" his accounting in several respects. First, the Secretary had included an assessment of royalties for "compression gas and gas lost in transit from the wellhead to the processing plant." Noting that Supron had held that such gas was not subject to royalty, the court ordered the Secretary's accounting revised on this item. (Conclusion #17.) Next, the court observed that the Secretary used the dual accounting to obtain "a weighted average for liquid content." The court found that this method "does not reflect the relative richness of entrained liquids in gas from each lease." Accordingly, the court directed the Secretary to follow the techniques of 30 C.F.R. § 221.46 for allocating liquid content and to "revise the dual accounting accordingly." (Conclusion #18.) Finally, the court noted that the Secretary had improperly included extraneous gas, not attributable to the lessees, which entered the processing plant. The court directed the Secretary to "adjust the royalties owed accordingly." (Conclusion #19.)

The court in Conoco responded as follows to the Tribe's request for prejudgment interest and to the defenses of res judicata and collateral estoppel raised by the lessees:

> 21. Pre-judgment [i]nterest is not appropriate on a debt which is unliquidated and which is incapable of calculation prior to judgment. Kennedy v. Moutrey, 572 P. 2d 933 (N.M. 1977). In the case at bar, the amount of royalties due could not have been discernible prior to the Court's ruling. Thus pre-judgment interest is no[t] appropriate in the case at bar. Phillips Petroleum Co. V. Johnson, 155 F. 2d 185 (5th Cir. 1946).
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> 22. The defenses of collateral estoppel and res judicata that have been raised as they relate to the Supron case are denied. The factual differences between this case and Supron (different bases, different parties, etc.) are substantial enough to warrant this position. The Supron decision has been adopted by this court where relevant.

Id. at 17.

Finally, the court directed the Secretary to file a "Second Revised Dual Accounting" within 60 days of the court's order. Id. at 15-18.

In a June 20, 1988, brief, the Department requested the court to reconsider its ruling on prejudgment interest. (App. Ex. 17.) The Department contended vigorously that such interest should be awarded and supported its argument with citation to statutory and case law authorities. On June 29, 1988, the Tribe joined in the Department's brief. On July 1, 1988, Southland filed a responsive brief arguing that the court's denial of prejudgment interest was proper because the royalties to be paid were not definite or ascertainable sums.

On August 25, 1988, the Secretary filed with the court an "Amended Revised Dual Accounting Report." 6/ In this accounting, the overall underpayment of all six lessees was reduced from $1,064,398 to $960,995. Southland's royalty underpayment was reduced from $76,190 to $44,965.

In an Order filed on November 21, 1988, the court in Conoco affirmed its denial of prejudgment interest, stating that "[i]t would be unfair to the Defendant oil companies to pay interest when they could not have ascertained that there were any more sums due the tribe." (App. Ex. 19.)

The MMS Payment Orders

On January 5, 1988, MMS' Dallas Area Compliance Office issued the first of the Orders culminating in this appeal. In this Order (MMS-88-0063-IND), MMS directed Meridian to pay $273,265.71 in late payment charges, calculated for the period from March 31, 1981, through November 30, 1987, on seven Jicarilla leases, including $6,321.12 on Lease No. 609-000101.

The Dallas Area Compliance Office again addressed Lease No. 609-000101 in an Order dated August 16, 1988 (MMS-88-0292-IND). In that Order, MMS noted that Southland had made delinquent royalty payments of $24,419.07 to the Jicarilla Apache Tribe on June 20, 1988. The MMS assessed late payment interest charges of $31,885.66 for the period March 31, 1981, through June 19, 1988. 7/

In a third Order, dated August 23, 1988 (MMS-88-0291-IND), the Dallas Area Compliance Office noted that $28,677.86 in delinquent royalty payments on Lease Nos. 609-000124 and 609-000151 had been received by the Tribe on July 26, 1988. In this Order, MMS assessed late payment charges of $15,872.75 for the period March 31, 1981, through July 25, 1988.

Decision on Appeal

The Acting Deputy Commissioner (ADC) considered and rejected Appellant's arguments that late payment interest charges were barred by res judicata or collateral estoppel, and by the statute of limitations, 28 U.S.C. § 2415(a) (1994). He ruled that the late payment interest

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6/ The report is attached to Appellant's Jan. 12, 1995, "Correction to Meridian and Southland's Reply to MMS' Answer."

7/ Appellant states in its Statement of Reasons (SOR) that Lease No. 609-000101 was not included in MMS' Jan. 5, 1988, payment Order, but that this lease was the subject of MMS' Aug. 16, 1988, payment Order. (SOR at 5.) The Jan. 5 payment Order does list Lease No. 609-000101, assessing $6,321.12 in late payment charges on it through November 1987. However, the Order does not state the amount of late royalty payments attributable to this lease. The Aug. 16, 1988, payment Order assessment of $31,885.66 in interest runs through June 19, 1988, and is based on late royalty payments of $24,419.07.

charges were not barred by res judicata or collateral estoppel because these charges were neither raised nor adjudicated as an issue in Supron. He found that the court's decision affirming the underlying obligation upon which the assessment of interest is based reinforced, rather than barred, the Tribe's claim to late payment interest. He noted further that MMS' standard procedure is to defer action on late payment interest until late payment is received and interest can be calculated.

The ADC also responded to Appellant's argument that prejudgment interest is inappropriate in situations where a debt is unliquidated and incapable of calculation prior to judgment. He found that the amount of the liability, though unliquidated, was based on a readily ascertainable value, and under such circumstances prejudgment interest was an equitable way to compensate the creditor for the loss of the use of funds due under a royalty payment program. The ADC noted that Appellant had failed to cite authority in support of its position that the Government was required to raise the issue of late payment interest in the Supron litigation, and that its failure to do so would operate as an absolute bar to MMS' later demand for payment. Citing FOGRMA and applicable regulations, the ADC found that MMS was required by law to assess interest where royalty payments are not received by the due date. The ADC further found, citing previous decisions by this Board, that 28 U.S.C. § 2415 (1994) was inapplicable to an administrative proceeding within the Department assessing interest on late royalty payments.

Arguments of the Parties

On appeal to this Board, Appellant vigorously contends that res judicata and collateral estoppel bar the MMS' demands for late payment charges. 8/ Appellant asserts that late payment interest is administrative relief which could or should have been sought in the Supron and Conoco litigations. (Statement of Reasons (SOR) at 8-9.) Appellant suggests that late payment interest charges are an issue not actually litigated, but precluded from litigation because they arise out of the same claim, transaction or connected series of transactions which were the subject of the court cases. Appellant contends that res judicata required the Tribe and the Department to assert in the Supron and Conoco litigations all claims arising from alleged failure to properly calculate royalties, and that late payment interest charges represent "simply an additional remedy from the underlying underpayment 'claim.'" (SOR at 11.) Appellant characterizes MMS' quest for late payment interest as "the very same relief for the same alleged harm" that characterized the failure to pay correct royalties to the Tribe. (Reply to Answer (Reply) at 5.)

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8/ In addition to its SOR, Appellant has filed four supplementary pleadings, presenting arguments chiefly on the doctrines of res judicata and collateral estoppel. The MMS has filed three pleadings, in addition to its Answer, responding to those arguments.

Appellant points out that the Tribe sought late payment charges in both litigations and waived that claim by withdrawing it in Supron. For this reason, Appellant asserts, collateral estoppel bars late payment interest with respect to all leases "because [in Conoco] the Parties actually litigated the issue, and the Tribe and Secretary lost." (SOR at 13.)

Appellant also argues that the imposition of late payment charges is an improper retroactive application of FOGRMA.

Finally, Appellant argues that the statute of limitations at 28 U.S.C. § 2415 (1994) bars the assessment of interest. Appellant cites Phillips Petroleum Co. v. Lujan, 4 F.3d 858 (10th Cir. 1993), which held that under the statute the "government's right of action accrued on the date * * * the royalties were due and payable," not on the date when MMS completed an audit, finding that additional royalties were due. Id. at 861. (SOR at 15-17; Reply at 14.) Appellant asserts that the court's holding is consistent with the 6-year recordkeeping provision of section 103(b) of FOGRMA, 30 U.S.C. § 1713(b) (1994), as limiting MMS' authority to make demands for payment. (SOR at 16.)

The MMS responds that res judicata and collateral estoppel are not available to Appellant to prevent late payment interest because the claims for late payment interest were not litigated in Supron. The MMS characterizes late interest payments as "part of the royalty due," but maintains that the claim for late payment interest is separate and distinct from the claim of royalties due. (Answer at 7.) The MMS asserts that it was in no position to make a claim for late payment interest until, utilizing late payments, it could calculate how much interest was due.

In their supplementary pleadings, the parties dispute whether and to what extent Lease Nos. 609-000124 and 609-000151 were included in the judgments in the Conoco litigation. The MMS initially took the position that res judicata did bar the assessment of late payment interest on late royalty payments made for Lease No. 609-000151 "[b]ecause [Lease No. 609-000151] was included in the Conoco litigation involving pre-judgment late payment interest, and the late payment was received on July 26, 1988, before the court's final judgment on December 21, 1988." (Answer at 10.) The MMS asserted, however, that Lease No. 609-000124 "was not subject to the Court's holding in its May 15, 1988, Findings of Fact and Conclusions of Law * * * [nor] the subject of the Court's final order on December 21, 1988." The MMS argued that "because late payment interest [on Lease No. 609-000124] was not addressed by the court in Conoco," MMS was not barred from collecting interest on late payments on this lease. (Answer at 10, 11.)

In its Reply to MMS' Answer at 11-12, Appellant asserts that Lease No. 609-000124 was indeed included in the Conoco final judgment. That judgment, Appellant asserts, held Southland accountable for $44,965, the sum of its liability on both leases under MMS' Amended Revised Dual Accounting Report.

Having contended in its March 6, 1995, pleading (MMS' Further Response) that Lease No. 609-000124 was not a part of the District Court's Findings of Fact and Conclusions of Law, MMS argues in a further pleading filed June 16, 1995, that the Conoco judgment did encompass Lease No. 609-000124 for purposes of "dual accounting" in addition to compensatory royalty. The MMS points out that its Amended Revised Dual Accounting Report specifically covered the period 1970 through 1980 and determined that for that period additional royalties of $44,965 were due on Lease Nos. 609-000124 and 609-000151. The MMS asserts that because the Conoco court adopted its Amended Revised Accounting Report on December 15, 1988, the court's judgment disallowing prejudgment interest applies only to late royalty payments for the 1970-80 period. However, MMS points out, its August 23, 1988, Order applied only to late royalty payments made after January 1981. The MMS contends that since these "later payments were not part of the Conoco litigation, MMS is not barred by the Conoco decision from assessing late payment interest on these payments." Id. at 4.

The MMS also contends, citing section 305 of FOGRMA, 30 U.S.C. § 1701 note (1994), that the statute applies to leases in existence before the passage of FOGRMA. The MMS points out that 30 C.F.R. § 221.80 (1981) provided the authority to collect late payment interest prior to the enactment of FOGRMA, and that, after its enactment, that authority was codified at 30 C.F.R. § 218.54. (Answer at 11, 16-17.)

Discussion

Res judicata embraces two doctrines, claim preclusion and issue preclusion (collateral estoppel), barring, respectively, a subsequent action or the subsequent litigation of a particular issue because of the adjudication of a prior action. Under claim preclusion, a judgment, once rendered, is the full measure of relief to be accorded between the same parties on the same claim or cause of action. South Delta Water Agency v. U.S. Department of the Interior, Bureau of Reclamation, 767 F.2d 531, 538 (9th Cir. 1985).

[1] The ADC correctly ruled that principles of res judicata and collateral estoppel could not bar MMS from seeking late payment interest. In the first place, "interest" is a concept separate and distinct from the late-paid royalties upon which it is assessed. The purpose of interest on judgments is not to penalize the debtor but to compensate the judgment creditor for the fact that he has not had the use of a sum of money to which he is entitled and that has been adjudged to be his. Equifax Inc. v. Luster, 463 F. Supp. 352, 356 (1978), aff'd, Arkansas Louisiana Gas Co. v. Luster, 604 F.2d 31 (8th Cir. 1979), cert. denied, 445 U.S. 916 (1980).

In this case, the right or entitlement to interest is specifically codified by Federal statute (FOGRMA), at 30 U.S.C. § 1721(a) (1994), which provides:

(a) Charge on late royalty payment or royalty payment deficiency

> In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of Title 26. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

(Emphasis supplied.) With this provision, Congress authorized the imposition of late payment charges to ensure that the Government would not lose the time value of money due and owing to it in situations where royalties were initially underpaid and then later corrected. Late payment charges compensate the creditor, in this case the Tribe, for the time value of money owing to it but not timely paid. The implementing regulation, 30 C.F.R. § 218.54(a), states that "[a]n interest charge shall be assessed on unpaid or underpaid amounts from the date the amounts are due." See also 30 C.F.R. § 218.150; Marathon Oil Co., 128 IBLA 168 (1994); Oxy USA, Inc., 125 IBLA 308, 310-11 (1993). Under these authorities, the Government must assess late payment charges where nonpayment or underpayment of royalties is established. The right to such interest is not lost if it is not asserted in district court. Bankatlantic v. Blythe Eastman Paine Webber, Inc., 12 F.3d 1045, 1053 (11th Cir. 1994). 9/

In this case, the Tribe's entitlement to interest and the Government's duty to collect it arose upon the court's judgments that additional royalties were owed. The Department and the Tribe first had to establish a right to additional funds before they could assert a claim for interest. Therefore, interest was not logically a claim or issue required to be raised, on pain of waiver or preclusion, in the Supron and Conoco litigations, nor was it an issue essential to the judgments in those litigations. See Arkla Inc. v. United States, 37 F.3d 621, 624 (Fed. Cir. 1994), cert. denied, NorAm Energy Corp. v. United States, 115 S.Ct. 1399 (1994). Accordingly, even in the absence of a statute authorizing interest, when final judgment was rendered that additional royalties were due, collateral estoppel would not bar the Government and the Tribe from pursuing any available remedy to obtain interest. See Allegheny Airlines, Inc. v. Forth Corp., 663 F.2d 751, 757 (7th Cir. 1981).

In denying prejudgment interest in Conoco, the court relied on the well established rule that where a claim is liquidated, or capable of being

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9/ Bankatlantic involved the "postjudgment interest statute," 28 U.S.C. § 1961 (1994), which allows for interest on any money judgment in a civil case recovered in a district court.

calculated prior to judgment, prejudgment interest may be allowed in the discretion of the court. In Re Acequia, Inc., 34 F.3d 800, 818 (9th Cir. 1994). See Sun Shipbuilding & Drydock Co. v. U.S. Lines Inc., 439 F. Supp 671 (E.D. Pa. 1977), aff'd, 582 F.2d 1276 (1978), cert. denied, 439 U.S. 1073 (1979). Conversely, a court may decline to award prejudgment interest in cases where damages are unliquidated or incapable of ascertainment as to amount due or date on which they are due. Coca Cola Bottling Co. of Elizabethtown, Inc. v. Coca Cola Co., 769 F. Supp. 599 (D. Del. 1991), aff'd in part, reversed in part, Coca Cola Bottling Co. v. Coca Cola Co., 988 F.2d 386 (3d Cir. 1993), cert. denied, 510 U.S. 908 (1994). In Conoco, the court's denial of prejudgment interest is based on the condition of unascertainability of the amount. The court's ruling in no way seeks to preclude or foreclose any claim for postjudgment interest.

In answer to apparent confusion on the part of MMS concerning Lease Nos. 609-000124 and 609-000151, we note that MMS must assess late payment interest on both of these leases, since there were late royalty payments on both. According to the documents before us in this appeal, both leases were indeed embraced in the Conoco litigation, at least to the extent that MMS' Amended Dual Accounting Report, submitted to the Conoco court in that action, specifically addresses underpayments on these leases for the period January 1, 1970, through December 31, 1980. (Ex. 5.) As we noted above, the court's denial of prejudgment interest does not bar MMS from seeking postjudgment interest on these underpayments. Indeed, MMS is statutorily required to do so. 30 U.S.C. § 1721(a) (1994). Further, the fact that the Conoco judgment does not address the late royalty payments and interest payments calculated by MMS for the period March 31 through July 25, 1988 (August 23, 1988, Order), neither bars nor permits MMS from seeking interest on these underpayments. The controlling circumstance is that, as stated in MMS' August 23, 1988, Order, delinquent royalty payments were established and remitted to the Tribe. The assessment of interest on those payments is mandatory. 30 U.S.C. § 1721(a) (1994).

[2] The assessment of late payment interest by MMS is not an improper retroactive application of FOGRMA. The terms of the statute itself provide for its application to leases issued prior to its enactment:

> The provisions of this Act * * * shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act [Jan. 12, 1983], except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.

30 U.S.C. § 1701 note (1994).

Clearly, 30 U.S.C. § 1721(a) (1994), provides authority for collection of late payment charges on late royalty payments made with respect to leases issued prior to its enactment. As we observed in Coastal Oil & Gas Corp., 108 IBLA 62, 65 (1989), there is no indication that Congress

intended to limit that section of FOGRMA to leases issued after its enactment. In addition, there is no evidence in this case that express and specific provisions of Appellant's leases would preclude application of FOGRMA. Indeed, as MMS points out, (Answer at 15), Federal leases such as Appellant's contain provisions incorporating future regulations, and section 304 of FOGRMA, 30 U.S.C. § 1753(a) (1994), expressly provides that FOGRMA's provisions "are supplemental to, and not in derogation of * * * authorities contained in any other provision of law." Accordingly, pre-FOGRMA leases cannot be interpreted to exclude post-FOGRMA regulations or provisions of FOGRMA itself.

We noted in Miami Oil Producers, Inc., 125 IBLA 313, 314 (1993), a case where the royalty obligation arose prior to the enactment of FOGRMA, even before the regulations requiring late interest payments, 30 C.F.R. §§ 218.54 and 218.102 were promulgated in 1984 and 1982, see 49 Fed. Reg. 37346 (Sept. 21, 1984) and 47 Fed. Reg. 47776 (Oct. 27, 1982), the Department provided regulatory authority for collection of late payment charges. The cited regulations were preceded by an interim rule that also provided for assessment of interest for late payment of royalty. See 30 C.F.R. § 221.80; 45 Fed. Reg. 84764 (Dec. 23, 1980). The interim rule was promulgated effective February 1, 1981, subsequently extended to March 30, 1981. See 46 Fed. Reg. 10707 (Feb. 4, 1981). The interim rule was then incorporated into a final rule, effective June 1, 1982, before being redesignated as 30 C.F.R. § 221.123, and eventually as 30 C.F.R. § 218.102. See 47 Fed. Reg. 22527 (May 25, 1982). Accordingly, the Department had express regulatory authority for the collection of interest charges that became due prior to the enactment of FOGRMA.

[3] The statute of limitations cited by Appellant, 28 U.S.C. § 2415(a) (1994), provides that "every action for money damages brought by the United States * * * which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues." We have long ruled that statutes establishing time limitations for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. Oryx Energy Co., 137 IBLA 177, 182 (1996), and cases cited therein. We have specifically declined to rule that MMS' demands for late payment charges are barred by that provision. Marathon Oil Co., 128 IBLA 168, 170-71 (1994); see also Chevron USA, Inc., supra, and cases cited (explicitly holding that 28 U.S.C. § 2415(a) (1994) does not bar MMS' demands for additional royalty).

A demand for payment of interest is not a judicial action for money damages brought by the United States, but rather is an administrative action not subject to the statute of limitations. See S.E.R. Jobs for Progress, Inc. v. United States, 759 F.2d 1, 5 (Fed. Cir. 1985); Alaska Statebank, 111 IBLA 300, 311-12 (1989). It is not within our authority to determine whether the statute of limitations would bar a judicial suit to collect royalty deemed owing on a lease. Such determination is properly

made by the court before which any collection proceeding is brought. Oryx Energy Co., supra, at 183, and cases cited.

Phillips Peroleum Co. v. Lujan, 4 F.3d 858 (10th Cir. 1993), cited by Appellant, is not to the contrary. The court there took notice that "[t]he parties agree that 28 U.S.C. § 2415(a) is the applicable statute for determining when the government must commence its action to collect the royalty underpayment." The present appeal before the Board is an administrative action seeking interest for late royalty payments. Under the authorities cited above, it is not subject to the statute of limitations.

As we observed in Chevron, USA, Inc., supra, at 154-55, under the 6-year recordkeeping provision of section 103(b) of FOGRMA, 30 U.S.C. § 1713(b) (1994), a lessee has a duty to disclose records that it was legally required to compile and voluntarily chose to retain beyond 6 years. Phillips Petroleum v. Lujan, 951 F.2d at 260 n.5. It follows that section 103(b) does not bar MMS from making demands for payment of additional royalty where it has retained relevant documents. See Amoco Production Co., 123 IBLA 278, 280 (1992).

Insofar as not discussed herein, Appellant's other arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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David L. Hughes
Administrative Judge